State Notes

TOPICS OF LEGISLATIVE INTEREST

May/June 2007

A Brief History of State Employee Wage Increases and Concessions: FY 1997-98 through FY 2006-07

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As a result of the current Michigan budget deficit, the State is continuing to explore a number of cost-saving measures. Cutbacks in the amount that is used to fund Michigan's State employee payroll are often included in efforts to reduce General Fund expenditures. The following provides an overview of wage adjustments for State classified employees beginning in fiscal year (FY) 1997-98, along with a discussion of the possible savings from employee concessions through banked leave time and furlough days based on the past impacts of such measures.

Background

The Michigan Civil Service Commission (CSC) is authorized by the Michigan Constitution in Article XI, Section 5, to regulate all conditions of employment in the State Classified Civil Service. Appointed by the Governor, the CSC is made up of four bipartisan members who in turn select a State Personnel Director to implement their decisions via the Department of Civil Service. The Employee-Employer Relations Rule (Rule 6-2) established by the CSC in 1983 provides for a system of collective bargaining to determine conditions of employment, including compensation for State classified employees.

At present, over 70.0% of the total State classified work force is represented by unions eligible to bargain collectively on behalf of State employees. Employees ineligible for collective bargaining unit representation include those in supervisory, managerial, and confidential positions as well as employees in business/administration services. The terms and conditions of employment of these nonexclusively represented employees (NEREs) are established through a process administered by the CSC Employee Relations Board. Serving as a Coordinated Compensation Panel, the Employee Relations Board recommends a Coordinated Compensation Plan for NEREs to the CSC. Both collective bargaining agreements and Coordinated Compensation Plans are subject to review, revision, and final approval by the CSC.

The contract negotiation and administration function of the Office of the State Employer (OSE) also collaborates with the CSC and the individual Executive branch departments and agencies to oversee all collective bargaining negotiations. The OSE formulates, executes, and administers labor relations policies for State classified employees.

The State Personnel Director, also authorized under Rule 6-2, establishes bargaining units of eligible employees into broad occupational groups with a community of interest. The 10 units include: Safety and Regulatory, Labor and Trades, Security, Human Services Support, Scientific and Engineering, Technical, Enlisted State Police, Institutional, Human Services, and Administrative Support. These units are exclusively represented by a number of unions, including: the Michigan State Employees Association (MSEA), the Michigan Corrections Organization (MCO), the State Employees International Union (SEIU) Local 517M, the Michigan State Police Troopers Association (MSPTA), the American Federation of State, County, and Municipal Employees (AFSCME) and the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW).

Contracts for State employees are usually negotiated every third year, although any increase in wages must be approved annually by the Legislature. The Michigan Constitution also specifies that increases in compensation may become effective only at the start of the State fiscal year, which begins on October 1. Once a collective agreement on a contract has been made, the Constitution

requires that the CSC submit any authorized increases in the rates of compensation to the Governor, who then passes on the increases to the Legislature as part of the annual Executive budget recommendation. The Legislature has 60 calendar days following transmission of the Executive recommendation to reject or reduce the rate of compensation increase; otherwise, the increase will automatically go into effect at the start of the next fiscal year. A two-thirds vote of the members elected to and serving in each house is required for a rejection or reduction of the recommended increase. If the Legislature makes reductions, they must be applied uniformly to all classes of employees and the Legislature may not adjust pay differentials already established by the CSC. Rates of compensation may not be reduced below those in effect at the time the increases are transmitted to the Legislature.

History of Collective Bargaining Agreements

The annual increases approved by the State Legislature over the past 10 years are summarized in Table 1. Although NEREs are ineligible for exclusive representation, the wage increases extended through collective bargaining agreements to other areas of the civil service are generally recommended for NEREs as well by the Coordinated Compensation Plan.

Table 1

Summary of Wage Adjustments - State Classified Civil Service
FY 1997-98 through FY 2006-07

Date	% Increase	Lump Sum Payments	Total of Base Wage Increase	Total Net Additional Costs[1)]
October 1, 1997	3.0%	---	$74,373,564	$91,884,837
October 1, 1998	3.0	$150	70,729,881	85,679,128
October 1, 1999	3.0	---	67,176,183	70,575,563
October 1, 2000	2.0	---	71,365,615	85,784,873
October 1, 2001	2.0	375	74,264,397	90,984,774
October 1, 2002	2.0	---	51,589,607	65,140,376
October 1, 2003	3.0	---	69,039,426	93,550,677
October 1, 2004	4.0	---	96,047,856	131,155,231
October 1, 2005	1.0	---	---	---
April 9, 2006	1.0	---	37,762,968[2)]	41,324,339[2)]
October 1, 2006	2.0	---	---	---
April 8, 2007	2.0	---	77,516,083[2)]	99,060,147[2)]

1) Net additional costs include FICA, retirement, cost saving measures, etc.
2) Due to the phased in implementation of the cost-of-living adjustments (COLA) the Net Additional Cost to the State of $41,324,339 in FY 2005-06 and $99,060,147 in FY 2006-07 represents approximately 75% of the full-year cost of the COLA.

Source: Michigan Office of the State Employer

January 1, 1996 – December 31, 1998

The collective bargaining agreement approved for January 1, 1996, through December 31, 1998, included a number of wage increases as well as a schedule of lump sum payments. While contractual provisions such as changes in health care benefits begin on January 1 at the start of the calendar year, wage increases do not become effective until October 1 at the onset of the State's fiscal year.

In both FY 1997-98 and FY 1998-99, the State's work force received a 3.0% increase in wages, with NEREs and Business/Administration employees receiving an additional lump sum payment of $150 in FY 1998-99. For this contract period, the net additional cost to the State, including base wage increases, lump sum payments, and the impact of FICA, retirement, and health care costs, was $177.6 million (Table 1).

January 1, 1999 – December 31, 2001

In December 1998, the CSC approved a three-year collective bargaining agreement for fiscal years 1999-2000, 2000-01, and 2001-02. The negotiations included a base wage increase of 3.0% for FY 1999-00 and an increase of 2.0% for FY 2000-01 for all State classified employees. For FY 2001-02, all State employees excluding employees classified as Institutional received an increase of 2.0% in addition to a lump sum payment of $375. State Institutional employees, represented by AFSCME, received a base wage increase of 4.5% for FY 2001-02, with no lump sum payment. These contract negotiations resulted in a net additional cost to the State of $247.3 million.

January 1, 2002 – December 31, 2004

The contract negotiated between the representative unions and the OSE for January 1, 2002, through December 31, 2004, included FY 2002-03, FY 2003-04, and FY 2004-05. During this period, hourly rates for State employees were increased by 2.0% at the start of FY 2002-03, 3.0% at the start of FY 2003-04, and 4.0% at the start of FY 2004-05, for a total increase of 9.0% during the contract period and a net additional cost to the State of $289.8 million.

It is important to note that even with the annual wage adjustments, the average annual salary of State full-time equated (FTE) employees grew by only 1.1% at the start of this period (Table 2). The early-out retirement plan option that was offered to State employees during a window in FY 2002-03 decreased the size of the State work force, as well as the average salary of State employees. This reduction was primarily due to the departure of high wage earners who took advantage of the early retirement option and their replacement with much lower (entry-level) wage earners.

Table 2

Summary of FTE Salary and Total State Employee Payroll
FY 1997-98 through FY 2006-07

Fiscal Year	Number of Employees Statewide	Avg. FTE Salary (not including health care & retirement benefits)	% Change in Average Salary	Total State Employee Payroll (in billions)
1997-98	58,675	$38,714		$3.21
1998-99	60,066	40,140	3.7%	3.46
1999-2000	61,493	41,473	3.2	3.70
2000-01	63,158	42,640	2.8	3.94
2001-02	60,881	43,722	2.5	3.92
2002-03	55,505	44,221	1.1	3.82
2003-04	54,615	45,885	3.8	3.76
2004-05	54,859	48,235	5.1	4.17
2005-06	53,824	49,462	2.5	4.41
2006-07	53,922[a)]	51,000[a)]	3.1	NA

[a)] Estimated

Source: Michigan Civil Service Commission Annual State Workforce Reports FY 1997-98 – FY 2005-06

January 1, 2005 – December 31, 2007

In December 2004, the CSC approved a three-year collective bargaining agreement covering FY 2005-06, FY 2006-07, and FY 2007-08. The contract calls for wage increases applied at six- month intervals, first in October and then in April. These increases will result in an approximate increase of 10.4% during the three-year period if the recommended FY 2007-08 increases are fully appropriated. In FY 2005-06, employee wages rose 1% in October 2005 and again in April 2006. For both FY 2006-07 and FY 2007-08, the wage increase is set at 2.0% for October 2006, April and October 2007, and April 2008. For FY 2005-06 and FY 2006-07, the full-year cost of the wage adjustments is only partially represented due to the phase-in method. The amounts of $41,324,339 in FY 2005-06 and $99,060,147 in FY 2006-07 represent approximately 75.0% of the total cost incurred by the State. These costs do not include the wage increases set for FY 2007-08 that will begin on October 1, 2007.

State Employee Concessions – Fiscal Years 2003-04 and 2004-05

The most recent concessions made by State employees occurred in FY 2003-04 and FY 2004-05. Employee costs due to previously negotiated cost-of-living adjustments of 3.0%, as well as increases in health insurance and retirement costs, were estimated to increase by $256.7 million. Due to continuing declines in State revenue, Governor Granholm did not include funding for these increases in her FY 2003-04 Executive budget recommendation. Instead, the State Employer negotiated concessions from employee unions to offset a portion of those anticipated cost increases.

The first concession agreed to by State employees and the State Employer was a banked leave time provision. In FY 2003-04, employees continued to work 40 hours per week; however, their base pay was reduced by two hours each week, to a maximum of 104 hours. The two hours per week for which State employees were not paid were instead placed into a separate banked leave time account and did not count toward an employee's regular annual leave cap. The accumulated banked leave time hours may be used as regular annual leave or remain in the employee's banked leave time account until separation from State employment, at which time the State will make a contribution to the employee's 401k or 457 retirement plan for the banked leave time hours. The amount of the State's contribution for the banked leave time is based on the employee's rate of pay at the time of separation. The banked leave time provision equated to a 5.0% pay reduction for State employees; however, employees did receive their 3.0% base wage adjustment that had been previously negotiated. The amount saved from this provision in FY 2003-04 was an estimated $150.0 million.

Beginning in January of FY 2004-05, a second concession was agreed to by the State Employer and State employees regarding banked leave time. The provision continued in the same manner as in FY 2003-04; however, the second concession required employees to bank, on average, what amounted to 3.2 hours per pay period. Some unions agreed to continue the banked leave time concession at the start of the fiscal year (October 1) without disruption from the previous concession, while other unions did not begin the second concession until January 1, 2005. On average, and depending on whether an employee began the second concession on October 1 or January 1, employees worked 40 hours per week but had their pay reduced by an average of 1.6 hours per week. This equated to a 4.0% pay reduction but again employees were able to retain their previously negotiated raise of 4.0% in their base pay. The second concession of banked leave time hours saved $147.3 million in FY 2004-05.

Concessions agreed to by State employees and the State Employer during FY 2003-04 also included a furlough program. The furlough program required full-time State employees to take 40 hours of unpaid leave in FY 2003-04. The unpaid leave time equated to a 1.9% pay reduction for State employees. All employees, except essential employees, were furloughed without pay on January 2, 2004. The remaining 32 hours of unpaid furlough leave were scheduled by the employees themselves subject to the same requirements as apply to annual leave. The furlough program also included a paid furlough day on December 26, 2003. The furlough program did not have any effect on an employee's retirement service credit, longevity payments, step increases, holiday pay, sick and annual leave time accruals, benefit levels, or insurance premiums. The amount saved from this program in FY 2003-04 was an estimated $56.0 million.

In addition to the two concessions agreed to by State employees in FY 2003-04, there were two other changes involving prescription drug co-pays and performance pay. Although the Civil Service Commission already had approved an increase in co-pays from $12 to $15 for brand name prescription drugs for FY 2003-04, the State Employer negotiated a revised increase to $30 for nonpreferred brand name drugs purchased via mail or retail pharmacies. All nonpreferred brand name drugs were required to have a generic substitute available or a therapeutically or chemically equivalent preferred brand name drug available. Preferred brand name drugs retained the originally approved increased co-pay of $15 for FY 2003-04. The savings that resulted from the increased co-pay for nonpreferred drugs were approximately $1.5 million in FY 2003-04. These co-pay provisions remain in effect in the current fiscal year.

Finally, performance pay awards authorized by CSC Rule 5-3.4(c)(2) were initially suspended for FY 2003-04 in another cost-saving measure. An estimated 3,000 employees were eligible for performance pay awards in FY 2003-04. Those eligible for these awards are not included in step increase schedules but rather are given awards based on performance evaluations. The estimated savings that resulted from suspending these performance pay awards in FY 2003-04 were $5.0 million. Performance pay awards for those eligible to receive annual lump sum payment awards have not been resumed since FY 2003-04.

Potential Savings from Furlough Days in FY 2007-08

Though much discussion has been held regarding possible furlough days in the current fiscal year, the budget negotiations reached for the shortfall in FY 2006-07 now ensure that furlough days will not have to be implemented this year for most departments and agencies. However, it remains a possibility that furlough days could be part of the FY 2007-08 budget that is yet to be finalized.

Based on current salaries and employees in Executive branch departments and agencies, one furlough day would save an estimated average of $8.0 million (gross) (Table 3). The total number of State employees who could be affected by furlough days in FY 2007-08 is estimated at 38,400. The average hourly wage per employee is estimated at $26. The number of furlough days that employees may have to take in FY 2007-08 will depend on the budget cuts necessary to meet the budget targets that ultimately will be set by the Governor and legislative leadership. Based on the above estimates (using FY 2006-07 averages), 40 hours of furlough, or five days on average, could save the State upward of $40.0 million in FY 2007-08.

Table 3

State Employees' Average Hourly Base Wage and Estimated Furlough Day Savings by Department and Agency - FY 2006-07

State Department/Agency	Number of Employees*	Average Hourly Base Wage	Base Wage Savings per 8-hour Furlough Day (gross)
Agriculture	537	$27.35	$117,496
Attorney General	540	34.74	150,077
Auditor General	139	34.29	38,130
Civil Rights	123	28.50	28,044
Civil Service	201	28.22	45,378
Community Health	2,968	28.48	676,229
Corrections	7,113	25.60	1,456,742
Education	352	29.06	81,833
Environmental Quality	1,445	28.39	328,188
Executive Office	53	30.67	13,004
History, Arts, and Libraries	199	26.33	41,917
Human Services	9,395	23.80	1,788,808
Information Technology	1,714	29.83	409,029
Labor & Economic Growth	3,262	27.47	716,857
Management & Budget	984	25.98	204,515
Military Affairs	477	25.36	96,774
Natural Resources	1,495	25.23	301,751
State	1,642	22.26	292,407
State Police	1,137	26.74	243,227
Strategic Fund	178	29.54	42,065
Transportation	2,901	25.62	594,589
Treasury	1,578	25.67	324,058
Total/Weighted Average	38,433	$25.99	$7,991,119

* Excludes security personnel, human services support, enlisted State Police, and institutional employees.

Source: Department of Civil Service, February 2007

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May/June 2007

The Decline of the Forest Development Fund: Causes and Consequences
Briana Kleidon, Intern

Established in 1993, the Forest Development Fund (FDF) serves to enhance the State forest system's management operations and practices. Revenue to the FDF is generated almost exclusively from the sale of State timber stands, along with a small amount of Federal funding. The revenue derived from the sale of timber and forest products is pledged to provide debt service on any bonds that may be issued for the Department of Natural Resources (DNR) by the Forest Finance Authority. To date, no bonds have been issued. Revenue not used to service bond debt is pledged to improving management practices in areas where intensive vegetation management for timber is the designated key value. The major obligations of the FDF include improving Michigan's timber stands, stabilizing the State's timber supply, and increasing the use of efficient and sustainable management practices on Michigan's forestland.

Along with the downward trend in revenue to the State's General Fund/General Purpose (GF/GP) budget, a number of the State's special and restricted funds also have experienced a decline in revenue over the past few years. The FDF is no exception. In FY 2005-06, revenue to the FDF decreased by 18.0% and the total balance of the Fund dropped 42.0% from FY 2004-05.[1] In determining the cause of the Fund's decline, a number of key factors including timber prices and State timber harvest volumes must be considered. In conjunction with decreasing revenue and reduced GF/GP support, appropriations for timber treatment activities have declined as FDF returns are shifted to other purposes such as fire protection.

Background

Michigan is home to an extensive stock of forestland that covers over 50.0% of the State, spanning more than 19.0 million acres. Approximately 21.0% of Michigan's forests are State-owned, designating the State as Michigan's largest landowner and making it directly responsible for the management of roughly 3.6 million acres of potentially harvestable forestland.[2] The rich abundance of timberland in Michigan exceeds that of all but four of the 50 states. Michigan's forests are a key component of both the environment and the State's economy for the recreational opportunities and forest products they provide.

With the expansion of the timber and forest products industry in Michigan in the 1980s, including greater numbers of paper mills and an overall increase in large sawmills, the State experienced a steady demand for timber through the 1990s. Continual growth in average timber prices was observed during this period for almost every Michigan timber species. Since 1990, the use of high-tech sawmills, as well as demand for quality hardwood such as oak and maple for furniture, flooring, and cabinetry, contributed to the continual growth in the prices of Michigan timber.

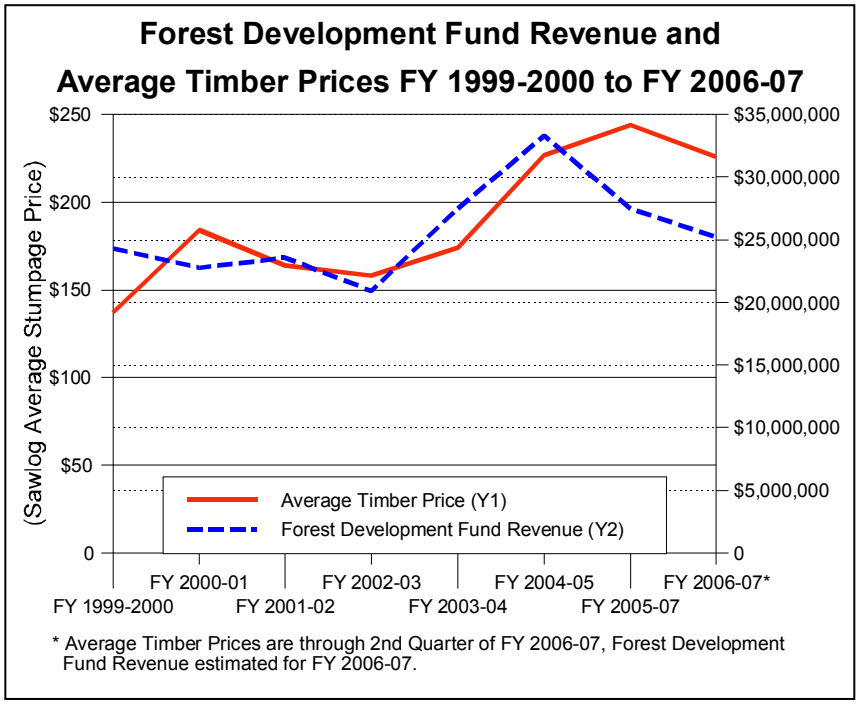
Timber Prices

As Figure 1 illustrates, revenue to the FDF from the sale of State timber harvests has grown steadily along with the rising price of timber, increasing at a stable rate from FY 1989-90 until FY 2003-04. Dramatic increases in timber prices in FY 2003-04 and FY 2004-05 are largely attributed to a decreased supply coupled with an increased demand for timber, due to growth in the housing

[1] Michigan Department of Natural Resources
[2] Michigan Department of Natural Resources http://www.mi.gov/dnr/0,1607,7-153-30301---,00.html

industry and a number of natural events, including Hurricane Katrina and the tsunami in Indonesia, which led to rebuilding and recovery efforts.

Figure 1



Source: Michigan Department of Natural Resources

Record-high timber prices throughout the Great Lakes region during this time period produced an overall increase in FDF revenue. Revenue to the FDF during this time grew at a rapid pace, increasing 31.7% between FY 2002-03 and FY 2003-04, growing an additional 21.2% in FY 2004-05, and remaining high through FY 2005-06 (Table 1).

Table 1

Forest Development Fund History			
Fiscal Year	**Revenue**	**Expenditures**	**Ending Balance**
1994-95			$5,688,900
1995-96	$17,410,300	$(16,951,100)	6,148,100
1996-97	19,914,900	(19,017,500)	7,045,500
1997-98	18,467,400	(19,969,900)	5,543,000
1998-99	18,565,200	(19,375,000)	4,733,200
1999-2000	24,290,000	(20,560,500)	8,472,700
2000-01	22,742,300	(23,634,100)	7,580,900
2001-02	23,541,300	(24,523,100)	7,399,100
2002-03	20,902,900	(22,788,100)	5,513,900
2003-04	27,531,500	(24,764,900)	8,280,500
2004-05	33,380,000	(29,982,900)	11,677,600
2005-06	27,493,100	(37,438,400)	6,732,300

Source: Department of Natural Resources

Historically, revenue to the FDF has risen at a slow and steady pace. The record-setting timber prices between FY 2003-04 and FY 2005-06 can be considered an anomaly based on the specific market conditions, such as the booming home-building industry during the time period. Therefore, the drastic increases in revenue to the FDF in FY 2003-04 and FY 2004-05 were not the beginning of an ongoing trend of rapidly increasing revenue. The incongruity of the FY 2003-04 and FY 2004-05 revenue levels is further emphasized by the 18.0% revenue decrease experienced by the Fund in FY 2005-06. Current timber prices have significantly decreased, though they are still above the FY 2002-03 level before the spike (Figure 1). As demand has declined and the market corrects for the unsustainable highs, it is not surprising that revenue to the FDF has dropped as well.

Timber Harvest Volume

Since 2000, an average of 50,125 acres of timber per year has been harvested from the State's forests (Table 2). Each year, the harvestable acreage targets for the timber sale program are established in the boilerplate language of the annual DNR budget. The current targeted acreage of 63,000 acres annually was initially set in 2002. Previously, the targeted acreage was set at 855,000 cords per year. In FY 2000-01, language in the DNR budget was changed to increase the target from 855,000 cords to 69,000 acres, and the target was reduced to its current level of 63,000 acres one year later. Changing the target from volume (cords) to area (acreage) granted the DNR more flexibility to treat a target number of acres of forest rather than work under the pressure of producing a set volume of timber. This approach was expected to encourage better management of the State forests and avoid potential mismanagement of an immature stand in order to reach quota volumes.

Table 2

Annual State Forest Harvests	
Fiscal Year	**Acres**
1999-2000	58,241
2000-01	45,608
2001-02	57,687
2002-03	46,318
2003-04	49,083
2004-05	50,774
2005-06	43,169

Source: Michigan Department of Natural Resources

Table 2 shows a slight downward trend of the State timber harvests during the past four years. The largest timber harvest of the past seven years occurred in FY 1999-2000, when 58,241 acres were harvested from State forestland. In FY 2005-06, timber harvests in the State fell to a 14-year low of 43,169 acres; a 26.0% decrease from the FY 1999-2000 level. Since FY 1999-2000, the State has been unsuccessful in meeting the established timber harvest target, with annual harvests averaging 20.4% below the target amount.

The DNR attributes this drop-off in timber harvesting to decreased revenue and the resulting staff and resource cutbacks within the Department. With reduced personnel, the DNR asserts that it is unable to mark recommended timber stands for harvest, therefore reducing the overall number of acres that can be treated and sold each year. Additionally, the time needed to prepare timber for commercial sale and removal is lengthened by reductions to DNR staff and resources dedicated to timber-marking. With the evaluation process currently requiring a time frame of up to 24 months,

fewer employees and pressure to complete the stand review process quickly will result in the marking of less timber. As a consequence, less timber is available for harvest and the State cannot reach its timber harvest goals. This creates a cycle of decreasing revenue from timber sales to the FDF, resulting in additional staff and resource cutbacks within the Department.

The DNR also faces pressure from Michigan's timber industry, which advocates increasing the target for harvestable acres to approximately 83,000 acres per year. These recommendations are based on U.S. Forest Service data that report that Michigan's forests are increasing in volume. While increased timber harvests could create additional revenue for the FDF, without adequate DNR staff and resources to evaluate and mark the timber, increased targets will be difficult, if not impossible, to reach.

Timber harvests that are frequently below established targets, along with declining timber prices, have contributed to decreases in FDF revenue. Without an alternative strategy for more accurately determining the availability of Michigan's timber stands and the resources to expedite the marking and prescription process (which determines the action that will be taken), it seems likely that the number of acres of Michigan's State timber that are harvested each year will continue to drop, bringing FDF revenue down with it.

Expanded Uses for FDF Appropriations

Forest Development Fund revenue, derived almost exclusively from State timber sales, is restricted to uses that promote sustainable State forest management and planning. In recent years, GF/GP revenue has been declining and all State department budgets have been reduced as a result. In order to make up for these GF/GP shortfalls in the DNR budget, FDF funds have been reallocated to other forest-related programs and away from some of their original, intended uses.

In FY 2001-02, a portion of the GF/GP support for the timber harvest appropriation was replaced with $2.0 million in FDF revenue. Three years later, in order to reduce GF/GP appropriations further, the FY 2004-05 budget shifted $1.0 million from the GF/GP budget to the FDF for forest fire protection. This occurred again in FY 2005-06 and FY 2006-07, with the budget including a shift from GF/GP to the FDF for fire protection activities in the amounts of $350,000 and $1.5 million, respectively. This has resulted in the use of an additional $2.9 million in FDF revenue annually for fire protection services compared with the amount used in FY 2003-04.

Also, beginning in FY 2004-05, $1.0 million from the FDF has been distributed as grants to soil conservation districts to provide forest management and planning services to private forestland owners. These grants, although forest-related, are not strictly in line with the intended purpose of the FDF.

The FDF appropriation for forest fire protection is used to fight forest fires on both State and private land. Although it is necessary to protect individual homes, property, and lives, these fund shifts draw revenue away from the primary purpose of the FDF. When the amount of GF/GP revenue supporting State forest fire protection services is decreased and replaced with FDF funds, revenue produced by the timber sale program is shifted away from a revenue-generating purpose to uses with no revenue-generating capabilities. The decisions to make these shifts were based on short-term increases in the FDF total Fund balance due to record-high timber prices, with the Fund growing 50.2% in FY 2003-04 and an additional 41.0% in FY 2004-05 (Table 1). It is possible that if GF/GP funding continues to decrease, more FDF revenue will be used for fire protection services.

The shifting of FDF funds to fire protection is a short-term solution that will result in the long-term consequence of lower FDF revenue, as available resources for timber marking and harvesting decrease.

Conclusion

The recent decline in revenue to the FDF can be attributed to a number of factors, rather than a single cause. As the price of timber levels off, falling from the previous unsustainable market high, revenue from State timber sales will continue to shrink and eventually stabilize around an estimated $22.0 million to $25.0 million per year. Additionally, the decline of timber harvests is an influential component of decreases to FDF revenue.

Given the State's current budgetary constraints and the demand for increased GF/GP funding in other areas of the overall State budget, departments with available restricted funds, such as the DNR, will continue to be asked to pay for a greater percentage of their operations from those restricted funds. Decreases in timber prices, declining volumes of timber harvested from State timber sales, and the shift of FDF revenue to nonrevenue-generating purposes will only accelerate the shrinking of the FDF's overall balance.

A shrinking FDF ultimately will mean less funding to support the marking and prescriptions of the State's timber stands. This equates not only to further reductions in timber harvesting and future revenue to the FDF, but also to decreased forest health through increases in disease and insects, as well as forest conversion by aggressive species. These outcomes will produce negative results for Michigan's environment and timber and forest products industry. As the well-known adage inquires, "If a tree falls in a forest and no one is there to hear it, does it make a sound?" In the case of the falling Forest Development Fund balance, it may eventually result in a reverberation that echoes beyond the forest.

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May/June 2007

Agriculture Equine Industry Development Fund Revenue Issues
By Debra Hollon, Fiscal Analyst

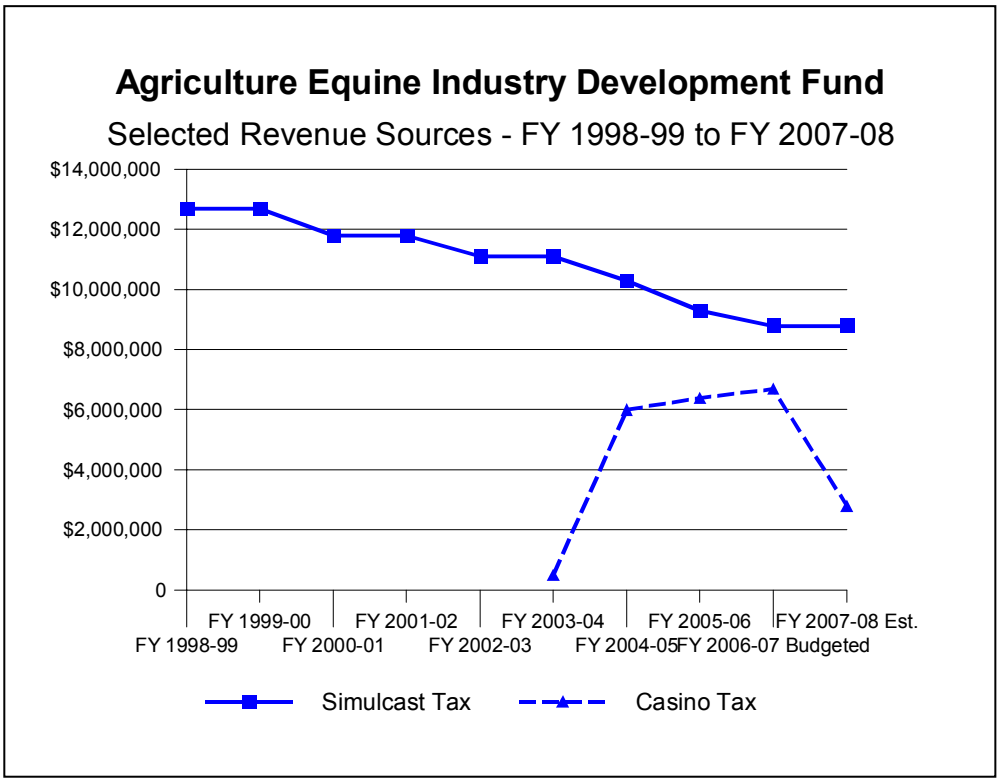
Background section primarily from a January, 2005, State Notes article by Craig Thiel

Background

The Horse Racing Law of 1995 created the Agriculture Equine Industry Development Fund (AEIDF) to provide funding for agriculture and equine industry development programs as provided in the statute. The Fund receives revenue from four principal sources: simulcast wagering taxes, horse racing licensing fees and fines, uncashed winning tickets, and, as of September 2004, a portion of the tax levied on Detroit casinos. By far, the two largest sources of revenue to the AEIDF are the simulcast wagering tax and the casino tax.

The primary source of revenue to the AEIDF is the simulcast wagering tax paid by each race meeting licensee, i.e., racetrack. The tax is levied at the rate of 3.5% on all money wagered on interstate and intrastate simulcast races. The simulcast wagering tax represents the only State tax levied on horse racing in Michigan. As shown in Figure 1, that tax revenue has declined each year since fiscal year (FY) 1999-2000. The reduction is attributable to the increase in competition for wagering dollars associated with the opening of the three Detroit casinos between July 1999 and November 2000 as well as the availability other gaming outlets in Michigan and Canada. The FY 2005-06 revenue to the AEIDF from this source was $9.3 million.

Figure 1



Public Act 306 of 2004 amended the Michigan Gaming Control and Revenue Act (MCL 432.212) to make several changes to the tax levied on the three Detroit casinos, effective September 1, 2004. Public Act 306 imposed a new 6.0% gross wagering tax on the casinos, bringing the total tax to 24.0%. Of the new tax revenue, 1/3 is allocated to the City of Detroit, 7/12 to the State General Fund, and 1/12 to the AEIDF. Under the Act, the three casinos will not be required to pay the State tax once the permanent casinos are fully operational or if and when video lottery is operational at Michigan horse racetracks. The FY 2005-06 revenue to the AEIDF from this source was $6.4 million.

FY 2007-08 Revenue Issue

As noted above, MCL 432.212 includes termination provisions for the State portion of the additional wagering tax on the Detroit casinos. When a permanent casino facility has been fully operational for a period of 30 days, the licensee may apply for certification by the Michigan Gaming Control Board. Once the casino is certified, the additional wagering tax will be reduced from 6.0% to 1.0%, which will be allocated entirely to the City of Detroit. This revised tax rate will be retroactive to the date the permanent casino became fully operational, i.e., the beginning of the 30-day waiting period.

Based upon a timetable that would have the MotorCity Casino operational by October 1, 2007, and the MGM Grand Detroit operational by January 1, 2008, the Consensus Revenue Estimating Conference, in May 2007, estimated a net reduction of $28.4 million in State revenue from the casino tax. The portion of this lost revenue that would have been allocated to the AEIDF is an estimated $4.3 million or 25.9% of the Fund's total appropriation for FY 2006-07. However, revised construction estimates have both casinos becoming fully operational by the start of the fiscal year on October 1. As a result, revenue may be even lower than anticipated.

Revenue to the AEIDF from simulcast wagering and the casino tax is designated for the broad purpose of agriculture and equine industry development pursuant to Section 20 of the Horse Racing Law. The Governor's FY 2007-08 recommended budget for the Department of Agriculture included expenditure reductions from the AEIDF to address the estimated revenue reduction. The specific budget cuts resulting from the decrease in revenue are outlined in Table 1. Total expenditures from the AEIDF for FY 2007-08 are recommended at $12.6 million, down from $16.6 million appropriated in FY 2006-07.

Revenue Issues in Future Years

Exacerbating the impact of the operational status of the MGM Grand Detroit and the MotorCity Casino is the distinct possibility that increased gaming activity at those two locations could decrease traffic at the horse racetracks in Michigan. It is possible that individuals will choose the expanded gaming opportunities at the new casino facilities over the racetracks. This shift would result in more drastic decreases in simulcast tax revenue during FY 2007-08, thereby continuing the downward trend already evident in Figure 1.

Finally, almost two-thirds of the FY 2007-08 revenue to the AEIDF is affected by the fact that two of the three Detroit casinos will become fully operational before the start of that fiscal year. The third casino, Greektown, will become fully operational in the fall of 2008, which will eliminate the remainder of revenue from the casino tax in FY 2008-09. Approximately $2.8 million in revenue will be lost.

Table 1

Agriculture Equine Industry Development Fund Selected Appropriations - FY 2006-07 to FY 2007-08			
		FY 2007-08 Governor's Recommendation	
Appropriation Unit/Line Item	FY 2006-07 Year-to-Date Appropriation	Appropriation	Change
Executive			
Statistical Reporting Service – Equine Industry Survey	$50,000	$0	$(50,000)
Animal Industry			
Animal Health and Welfare	$58,200	$58,200	$0
Bovine Tuberculosis Program	2,340,900	2,125,400	(215,500)
Subtotal	$2,399,100	$2,183,600	$(215,500)
Agriculture Development			
FFA Association	$80,000	$0	$(80,000)
4-H Association	20,000	0	(20,000)
Subtotal	$100,000	$0	$(100,000
Fairs and Expositions			
Building & Track Improvements	$963,200	$0	$(963,200)
Purses and Supplements	3,031,700	2,370,000	(661,700)
Standardbred Breeders' Awards	1,273,000	969,000	(304,000)
Standardbred Purses & Supp	2,305,700	1,789,300	(516,400)
Standardbred Training & Stabling	44,900	36,000	(8,900)
Thoroughbred Program	3,092,400	2,400,000	(692,400)
Thoroughbred Owners' Awards	159,900	124,000	(35,900)
Standardbred Sire Stakes	1,040,000	810,000	(230,000)
Thoroughbred Sire Stakes	1,063,100	830,000	(233,100)
Light Horse Racing	170,900	132,000	(38,900)
Distribution-Outstanding Winning Tickets	700,000	700,000	0
Subtotal	$13,844,800	$10,160,300	$(3,684,500)
Information Technology			
Information Technology Services	$221,100	$208,100	$(13,000)
Total	**$16,615,000**	**$12,552,000**	**$(4,063,000)**

Conclusion

Revenue to the Agriculture Equine Industry Development Fund from existing sources has been steadily declining over the past several years and will be drastically reduced in the next two fiscal years. This lack of resources will necessitate some sort of action in the form of additional cuts to the horse racing line items, a shift of AEIDF funding from Bovine TB eradication to horse racing programs, or the use of some new funding source.

State Notes

TOPICS OF LEGISLATIVE INTEREST

May/June 2007

An Overview of Partial-Birth Abortion Laws and Court Rulings
By Patrick Affholter, Legislative Analyst

The practice and regulation of what is commonly referred to as "partial-birth abortion" have been a contentious issue on the state and Federal levels for several years. Since the 1990s, a majority of states have enacted laws prohibiting partial birth abortions, according to the website for the Guttmacher Institute (http://www.guttmacher.org). Most of the bans have been specifically blocked by courts, while others have remained unchallenged but may be unenforceable pursuant to the 2000 U.S. Supreme Court decision in *Stenberg* v *Carhart*, which invalidated a Nebraska law (discussed below). Evidently, only Ohio's ban has been upheld by a court after being challenged.

Recent court cases involving both Federal and Michigan laws have shed new light on the partial-birth abortion issue.

In April 2007, in *Gonzales* v *Carhart*, the United States Supreme Court upheld a Federal law passed in 2003 that bans partial-birth abortion. Unlike the Court's previous decision on this subject, *Stenberg* v *Carhart*, the *Gonzales* decision did not find the 2003 Federal proscription to be void for vagueness or lack of an exception for the health of the mother.

Subsequent to the *Gonzales* decision, in June 2007, the U.S. Court of Appeals for the Sixth Circuit overturned Michigan's Legal Birth Definition Act in *Northland Family Planning Clinic* v *Cox* because, as was the case in *Stenberg*, the statute would have prohibited other procedures not generally considered to constitute partial-birth abortion, and therefore placed an unconstitutional burden on a woman's right to terminate her pregnancy.

This article reviews some key abortion-related court cases, including the 2007 Supreme Court and Court of Appeals decisions, as well as the Federal and State statutes that gave rise to those recent cases.

General Abortion-Related Case Law

Roe v *Wade* (410 U.S. 113). In 1973, the U.S. Supreme Court held that a Texas law that criminalized abortions except those necessary to save the mother's life, without regard to pregnancy stage and without recognition of the other interests involved, violated the Due Process Clause of the Fourteenth Amendment. The Court found that the constitutional right of privacy "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy...but that this right is not unqualified and must be considered against important state interests in regulation"; and, "a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life".

The Court concluded that, for the stage before the approximate end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician. For the stage after the approximate end of the first trimester, the state, in promoting its interest in the health of the mother, may regulate the abortion procedure in ways that are reasonably related to maternal health. For the stage subsequent to viability, the state, in promoting its interest in the potentiality of human life, may regulate

and even proscribe abortion except when it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

Planned Parenthood of Central Missouri v *Danforth* (428 U.S. 52). This 1976 case apparently was the only U.S. Supreme Court decision involving the constitutionality of a ban on a specific abortion procedure, until *Stenberg* in 2000. In addition to addressing several other issues, the Court held that a Missouri statute banning the saline amniocentesis abortion procedure was unconstitutional. According to the trial court record, this method was one of the most commonly used in the nation after the first trimester, and, with respect to maternal mortality, safer than continuation of the pregnancy until normal childbirth. The Supreme Court reasoned that, "as a practical matter, it forces a woman and her physician to terminate her pregnancy by methods more dangerous to her health than the method outlawed". The Court concluded that the ban on the procedure constituted an "unreasonable or arbitrary regulation designed to inhibit, and having the effect of inhibiting the vast majority of abortions after the first 12 weeks. As such, it does not withstand constitutional challenge."

Planned Parenthood of Southeastern Pennsylvania v *Casey* (505 U.S. 833). In this 1992 plurality opinion, which dealt with the issue of informed consent to abortion, the U.S. Supreme Court reaffirmed the essential holdings in *Roe* that: A woman has the right to terminate her pregnancy before fetal viability occurs without any undue interference from the state; a state has the power to restrict abortions after viability, if the law contains exceptions for a pregnancy that endangers the woman's life or health; and the state has a legitimate interest from the outset of a pregnancy in protecting the health of the woman and the potential life of the fetus that may become a child. The Court, however, also affirmed its 1989 decision in *Webster* v *Reproductive Health* Services (492 U.S. 490) to reject the rigid trimester framework outlined in *Roe*, reasoning that that approach was incompatible with the state's interest in potential life throughout the pregnancy.

The plurality *Casey* opinion adopted an "undue burden" standard for evaluating a state's abortion restrictions and held that an undue burden exists when a provision of law has the purpose or effect of placing a "substantial obstacle" in the path of a woman seeking an abortion before fetal viability. Using this standard, the Court ruled that Pennsylvania's informed consent provisions--including a 24-hour waiting period and fetal descriptions--did not pose an undue burden on a woman's right to terminate a pregnancy, although the Court did reject a spousal notification requirement.

Previous Partial-Birth Abortion Laws and Decisions

Michigan Statutes and Court Challenges. Public Act 273 of 1996 enacted a ban on partial-birth abortion but was overturned in 1997 by the U.S. District Court for the Eastern District of Michigan (*Evans* v *Kelley*, 977 F. Supp. 1283). Public Act 273 amended the Public Health Code to prohibit a "partial-birth abortion", except to save the life of a pregnant woman. "Partial-birth abortion" was defined as a procedure in which a physician or a person acting under a physician's delegatory authority partially vaginally delivered a living fetus before killing the fetus and completing the delivery.

The *Evans* Court found that the Act's definition of "partial-birth abortion" was "hopelessly ambiguous and not susceptible to a reasonable understanding of its meaning", in violation of Due Process requirements that people subject to regulation have a reasonable opportunity to know what conduct is prohibited. The Court declared the entire statute void. The Court also found that the statute's prohibition included several abortion procedures, including one used in more than 85% of the post-first-trimester abortions performed in Michigan. The Court then concluded that Public Act 273 was "facially overbroad because in a substantial percentage of cases in which the statute is implicated, it will operate as a substantial obstacle to a woman's choice to undergo an abortion", thereby placing an undue burden on women seeking an abortion, in violation of *Casey*.

After the *Evans* decision, Public Act 107 of 1999 attempted to ban partial-birth abortions by establishing the Infant Protection Act. That Act made it a felony for a person intentionally to perform a procedure or take an action upon a "live infant" (as defined in the Act) with the intent to cause the infant's death. In April 2001, the U.S. District Court for the Eastern District of Michigan ruled the Act unconstitutional and permanently enjoined the State from enforcing it (*Womancare of Southfield* v *Granholm*, 143 F. Supp. 2nd 849).

In its ruling, the Court held that the statute failed "to contain an adequate exception to protect the mental and/or physical health of the pregnant woman" and that the effect of Michigan's law was "to place an undue burden on a pregnant woman's right to make a decision regarding abortion".

U.S. Supreme Court Decision. In 2000, in *Stenberg* v *Carhart* (530 U.S. 914), the U.S. Supreme Court addressed the constitutionality of Nebraska's ban on partial-birth abortion. The Court declined to revisit the established legal principle "that the Constitution offers basic protection to the woman's right to choose". Rather, it applied to the Nebraska law three other established principles to determine the constitutionality of the partial-birth abortion ban.

The three principles are: 1) Before viability, a woman has the right to choose termination of her pregnancy; 2) a law restricting abortion is unconstitutional if it imposes an undue burden on the woman's decision before fetal viability and that undue burden is "shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus"; and 3) "subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother". After considering these principles, the Court held that the Nebraska statute was unconstitutional.

Since the Nebraska law sought to prohibit a particular procedure, the Court offered a detailed description of various abortion procedures, including dilation and evacuation (D&E), which the Court identified as the most commonly used procedure in second trimester abortions, and dilation and extraction (D&X), also known as intact D&E (the procedure used in what generally is referred to as "partial-birth abortion").

The *Stenberg* Court determined that Nebraska's law violated the Constitution for at least two reasons. Quoting *Casey*, the Court stated, "First, the law lacks any exception 'for the

preservation of the...health of the mother'…Second, it 'imposes an undue burden on a woman's ability' to choose a D&E abortion, thereby unduly burdening the right to choose abortion itself." The Court also determined that the Nebraska statute did not further an interest in the potentiality human life of the fetus because it would not save the fetus from destruction, but would regulate only a method of performing abortion.

The Court particularly identified as problematic the Nebraska law's application both before and after viability and its use of the term partial-birth abortion without reference to which medical procedure was prohibited. The Court posited that, since case law requires a health exception "in order to validate even a postviability abortion regulation, it at a minimum requires the same in respect to previability regulation", and the statute contained no such exception. In addition, while Nebraska officials contended that the ban applied only to the D&X procedure, the Court stated, "Even if the statute's aim is to bar D&X, its language makes clear that it also covers a much broader category of procedures. The language does not track the medical differences between D&E and D&X--though it would have been a simple matter [to do so]".

The Court summarized its findings as follows: "[U]sing this law some present prosecutors and future Attorneys General may choose to pursue physicians who use D&E procedures, the most commonly used method for performing previability second trimester abortions. All those who perform abortion procedures using that method must fear prosecution, conviction, and imprisonment. The result is an undue burden upon a woman's right to make an abortion decision. We must consequently find the statute unconstitutional."

Recent Partial-Birth Abortion Laws and Decisions

Federal Prohibition. In 2003, Congress passed and President George W. Bush signed into law the Partial-Birth Abortion Ban Act (18 USC 1531). The Act prohibits a physician, acting in or affecting interstate or foreign commerce, from knowingly performing a partial-birth abortion, thereby killing a human fetus. The prohibition "does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself". The Act prescribes a criminal penalty of a fine or up to two years' imprisonment and includes provisions for civil actions.

The Act defines "partial-birth abortion" as an abortion in which the person performing the procedure "deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus".

The Act also contains a list of Congressional findings, including that "Congress is not bound to accept the same factual findings that the Supreme Court was bound to accept in Stenberg" and "is entitled to reach its own factual findings…and to enact legislation based upon these findings so long as it seeks to pursue a legitimate interest that is within the scope of the Constitution, and draws reasonable inferences based upon substantial evidence".

Gonzales v *Carhart*. In overturning lower courts and upholding the Federal Partial-Birth Abortion Ban Act, the U.S. Supreme Court stated, "Compared to the state statute at issue in *Stenberg*, the Act is more specific concerning the instances to which it applies and in this respect more precise in its coverage." Since the prohibited procedure involves delivery of a fetus to certain "anatomical landmarks" (i.e., the presentation of the head or, in a breech birth, the presentation of the trunk past the navel), the Court held that the Act affords doctors a reasonable opportunity to know what is prohibited: "Unlike the statutory language in *Stenberg* that prohibited delivery of a 'substantial portion' of the fetus—where a doctor might question how much of the fetus is a substantial portion—the Act defines the line between potentially criminal conduct on the one hand and lawful abortion on the other." Also, since the Act refers to knowingly performing a partial-birth abortion, the Court concluded that it could not be considered a "trap" to catch a doctor performing a standard D&E who mistakenly, or because of some development during surgery, performs an intact D&E.

The Court also discussed the Act's lack of a health exception, but held, "The Act is not invalid on its face where there is uncertainty over whether the barred procedure is ever necessary to preserve a woman's health, given the availability of other abortion procedures that are considered to be safe alternatives." The Court concluded, "The medical uncertainty over whether the Act's prohibition creates significant health risks provides a sufficient basis to conclude…that the Act does not impose an undue burden."

In sum, the Court stated, "We conclude that the Act is not void for vagueness, does not impose an undue burden from any overbreadth, and is not invalid on its face."

Michigan Law. In 2003, the Legislature approved Senate Bill 395, which proposed the Legal Birth Definition Act, and sent the bill to Governor Jennifer M. Granholm, who vetoed the measure. The Act then was proposed by initiative petition and passed into law by the Legislature, without the Governor's signature, becoming Public Act 135 of 2004. (Under Article 2, Section 9 of the State Constitution, measures proposed by citizen initiative and approved by a majority vote of the Senate and House of Representatives become law without the Governor's signature.)

The Legal Birth Definition Act does not refer directly to any abortion procedure, but provides that a "perinate" is considered a legally born person for all purposes under the law. The Act defines "perinate" as "a live human being at any point after which any anatomical part of the human being is know [sic] to have passed beyond the plane of the vaginal introitus until the point of complete expulsion or extraction from the mother's body". "Live" means demonstrating one or more of the following biological functions: a detectable heartbeat, evidence of breathing, evidence of spontaneous movement, or umbilical cord pulsation. "Anatomical part" means any portion of the anatomy of a human being that has not been severed from the body, but not including the umbilical cord or placenta.

The Act includes an immunity provision for performing any procedure that results in injury or death of a perinate if the perinate is being expelled from the mother's body as a result of a spontaneous abortion; or if, in the physician's reasonable medical judgment and in compliance with the applicable standard of practice and care, the procedure was necessary

either 1) to save the life of the mother and every reasonable effort was made to preserve the life of both the mother and the perinate, or 2) to avert an imminent threat to the physical health of the mother, and any harm to the perinate was incidental to treating the mother and not a known or intended result of the procedure performed.

The Act also contains a list of legislative findings, including that the U.S. Supreme Court, in *Roe*, declared that while an unborn child is not a person as understood and protected by the constitution, any born child is a legal person with full rights, but that the *Roe* Court did not attempt to define birth or place any restrictions on the states in defining when a human being is considered to be born. The legislative findings also state, "That, when any portion of a human being has been vaginally delivered outside his or her mother's body, that portion of the body can only be described as born and the state has a rational basis for defining that human being as born and as a legal person."

Northland Family Planning Clinic v *Cox*. The U.S. Sixth Circuit Court of Appeals found that "Michigan's law fails to comply with the explicit limitations that the Supreme Court has established for statutes regulating abortion", and affirmed the ruling of the U.S. District Court that the Legal Birth Definition Act is unconstitutional.

The Court of Appeals pointed out that, unlike the Federal prohibition upheld in *Gonzales*, the Michigan statute does not rely on anatomical landmarks, but essentially would prohibit any abortion procedure in which any anatomical part of a live fetus is removed from the mother's body. The Court opined that this "necessarily means it applies to D&E procedures" and also could apply to other protected abortion procedures. The Court stated, "*Gonzales* left undisturbed the holding from *Stenberg* that a prohibition on D&E amounts to an undue burden on a woman's right to terminate her pregnancy". "[I]t is apparent that the Michigan statute would prohibit D&E, and under the framework of *Stenberg* and *Gonzales*, impose an unconstitutional undue burden."

In reviewing the question of the health exception in the Michigan statute, the Court of Appeals suggested that although "*Gonzales* complicated the meaning of *Stenberg's* holding regarding the need for a health and life exception", it could affirm the District Court's ruling that the Act failed to protect the health of the woman "without addressing the complicated implications of *Gonzales*". The Court of Appeals stated, "The bottom line is that the life and health exceptions are *exceptions* to an unconstitutional and un-fixable general prohibition on certain abortion procedures. That is to say it is unnecessary…to address exceptions to an unconstitutional and unenforceable general rule" (emphasis in original).

As of June 22, 2007, the Michigan Attorney General's office had not decided whether to pursue an appeal to the U.S. Supreme Court.

Conclusion and Outlook

By upholding the Federal ban on partial-birth abortion, the U.S. Supreme Court's *Gonzales* opinion may seem to represent a broad departure from previous court opinions regarding the procedure. The Court's recent focus on the use of anatomical landmarks in the Partial-Birth Abortion Ban Act, however, also provides a framework for assessing future attempts to ban

particular abortion procedures. In light of *Gonzales*, the Sixth Circuit Court of Appeals ruling regarding Michigan's Legal Birth Definition Act might seem confusing; however, while the Supreme Court contrasted the Federal ban to the Nebraska statute previously overturned in *Stenberg*, the Court of Appeals found Michigan's ban similar to the Nebraska law and not in line with the Federal law upheld in *Gonzales*.

In addition, in support of its position on the Legal Birth Definition Act, the State had pointed to a 2003 Sixth Circuit Court of Appeals decision upholding an Ohio ban on partial-birth abortion (*Women's Medical Professional Corporation* v *Taft*). The Court of Appeals, however, described the Ohio statute as "significantly narrower", and pointed out that the Ohio law specifies that it does not prohibit certain abortion procedures, including D&E. The Court also noted that it had upheld the Ohio statute the year before Michigan's Legal Birth Definition Act was adopted. "Michigan could have simply copied that statute word-for-word, and been virtually guaranteed a favorable result in the courts of this Circuit."

The *Gonzales* April 2007 opinion might be expected to provide an impetus for states to enact similar prohibitions modeled on the Federal Partial-Birth Abortion Ban Act. As of June 2007, legislation essentially mirroring the Federal law has been introduced in Michigan and Louisiana. According to information supplied by the National Conference of State Legislatures, bills have passed each house of the Louisiana legislature and are pending in the other house. In Michigan, House Bill 4613 was introduced on April 19 (the day after the *Gonzales* decision was issued) and has been referred to the House Committee on Judiciary.